

RESOLUTION

NO. R-19-___

CITY HALL: February 21, 2019

BY: COUNCILMEMBERS MORENO, WILLIAMS, GIARRUSSO, BANKS AND BROSSETT

RESOLUTION AND ORDER IMPOSING SANCTIONS; DIRECTING COST PROTECTIONS AND OTHER MODIFICATIONS TO NEW ORLEANS POWER STATION

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans ("Charter"), the Council of the City of New Orleans ("Council") is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the City of New Orleans; and

WHEREAS, Entergy New Orleans, L.L.C., effective September 1, 2015, is a public utility providing electric and natural gas service to all of New Orleans; and

WHEREAS, ENO is a wholly owned subsidiary of Entergy Utility Holding Company, L.L.C. The other four operating companies are Entergy Arkansas, Inc. ("EAI"), Entergy Louisiana, L.L.C. ("ELL"), Entergy Mississippi, Inc. ("EMI"), and Entergy Texas, Inc. ("ETI"). These five operating companies are referred to collectively as the "Operating Companies"; and

WHEREAS, the Council is responsible for ensuring that New Orleans customers receive reliable electric and gas service at just and reasonable prices; and

BACKGROUND

WHEREAS, on June 20, 2016, Entergy New Orleans ("ENO" or "Company") filed its original application to construct a natural gas combustion turbine plant that was unjustifiably oversized at 226MW and ignored the Council's stated desire to facilitate the integration of renewables and to expand efficiency while also providing "black start," all-weather capability of the New Orleans Power Station ("NOPS") on the Michoud site in New Orleans; and

WHEREAS, on August 11, 2016, the New Orleans City Council approved resolution R-16-332 and opened Docket Number UD-16-02 for the review of ENO's application, and

WHEREAS, the reaction of the Council, its Advisors and the public to the original filing, in part caused ENO to propose a smaller more acceptable NOPS 128 MW RICE alternative in its "Supplemental and Amending Application of Entergy New Orleans, Inc. for

Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief” filed with the Council on July 6, 2017; and

WHEREAS, on August 10, 2017, the Council adopted Resolution R-17-426, which established a procedural schedule to examine the application as amended, and

WHEREAS, the Council was clear and unambiguous as to the extreme importance of the NOPS proceedings and the seriousness of the decision that the NOPS proposal placed before the Council; and

WHEREAS, Resolution R-17-426 required ENO to conduct no fewer than five public meetings and required the Council Utilities Regulatory Office (“CURO”) to hold a public meeting in Council chambers, and

WHEREAS, the Council schedules public hearings when “it is deemed desirable by the Council that members of the public at large who are not parties of record should be heard on any matter” in a regulatory proceeding;¹ and

WHEREAS, the October 17, 2017 NOPS public hearing was held pursuant to such a determination by the Council; and

WHEREAS, on February 21, 2018 the Utility, Cable, Telecommunications and Technology Committee (“UCTTC”) held a public meeting to discuss NOPS; and

WHEREAS, even though the City Code provides that public comment gathered at such a public hearing is not itself part of the regulatory administrative record, the input from public comment can be weighed by the Council in the overall decision-making process; and

WHEREAS, engaging in any manipulation, distortion or deception in connection with such an important public meeting undermines the Council’s clearly stated desire to obtain accurate public comment; and

WHEREAS, in light of the Council’s specific requirement to conduct a public hearing on ENO’s NOPS proposal, and to receive public comment at the UCTTC meeting, the Company, a regulated utility charged with providing electrical service to the entire City of New Orleans, had a clear legal, regulatory and ethical obligation to allow the members of the public, not parties of record to the case, to provide their honest, uncompensated and non-deceptive expressions of support or opposition to the Council; and

¹ *City Code Section 158-431 (b).*

WHEREAS, on March 8, 2018, the City Council met and heard public comment on Resolution R-18-65, a resolution to approve ENO’s application to construct NOPS and request for cost recovery and timely relief, and approved said Resolution by a vote of 6 to 1; and

WHEREAS, on April 19, 2018 a lawsuit was filed in Civil District Court, Parish of Orleans alleging that people were paid to attend one or more NOPS-related meetings, and alleging that as a result opponents of the NOPS plant were prevented from entering due to the limited capacity of the meeting rooms; and

WHEREAS, in an ENO news release dated May 10, 2018, ENO stated that an internal investigation had been launched after the filing of the lawsuit alleging that people were paid to attend or speak at one or more public meetings; and

WHEREAS, the news release stated that ENO entered into a contract with The Hawthorn Group (“Hawthorn”) “to assist with organizing local grassroots support for NOPS at two public meetings relating to NOPS on October 16, 2017, and February 21, 2018;” and

WHEREAS, the news release further stated that ENO’s own investigation concluded that, in fact, Hawthorn retained Crowds on Demand, allegedly without ENO’s knowledge or consent, and that, allegedly without ENO’s knowledge or consent, Crowds on Demand paid individuals to appear and/or speak at two meetings for which Hawthorn was contracted to organize supporters; and

WHEREAS, based upon ENO’s own investigation, which confirmed many key elements of the allegations about paid “supporters,” on May 24, 2018, the Council considered and unanimously adopted Motion M-18-196 immediately initiating an independent third-party investigation of ENO relative to allegations that ENO, Entergy, or some other entity paid or participated in paying actors to attend and/or speak in support of NOPS at one or more public meetings in connection with ENO’s NOPS application;² and

WHEREAS, the Council also adopted Motion M-18-197 directing Council staff to issue a Request for Qualifications to begin the competitive selection process established under Council Rule 45 to select investigators to conduct the independent investigation; and

WHEREAS, a Request for Qualifications for an independent investigator was issued on May 25, 2018; and

² ENO and Entergy will be referred to collectively and interchangeably because the facts indicate that ENO, its parent and other Entergy affiliates coordinated efforts with respect to the matters investigated.

WHEREAS, on June 21, 2018, the Council adopted Motion M-18-255 selecting Sher, Garner, Cahill, Richter, Klein, and Hilbert, L.L.C. and the Honorable Calvin Johnson (retired) (“Investigators”) to conduct the investigation, and

WHEREAS, the contract between the Council and the Investigators was executed on August 4, 2018, and the investigation was formally commenced; and

WHEREAS, the Contract required that a report be filed with the Council on or before September 4, 2018; and

WHEREAS, Investigators asserted to the Council that ENO was resisting certain requests for documents and information causing the Investigators to request and receive two extensions from the Council for filing the report; and

WHEREAS, Investigators filed their final report (“Report”) with the Council on October 29, 2018; and

WHEREAS, the Report finds, among other things, that:

- Numerous individuals were paid to attend and/or speak in support of ENO at two public meetings;
- Instead of disclosing the payments and the affiliation with ENO these attendees and speakers were commissioned to pose as citizens genuinely in support of NOPS and were coached with respect to comments and with respect to avoiding the media;
- Payment and the obligation to pay flowed from ENO through ENO’s vendors to the individuals hired to attend and/or speak at meetings on October 16, 2017 and February 21, 2018;
- ENO took no corrective action and continued to deny any knowledge of the improper activity even after it was clear the conduct had occurred;
- ENO knew or should have known that such conduct occurred or reasonably might occur as a result of its engagement of Hawthorn; and

WHEREAS, such conduct by a regulated utility cannot be tolerated and must be effectively deterred in the future; and

WHEREAS, on October 31, 2018, the Council adopted Resolution R-18-474 initiating a show cause proceeding regarding the imposition of sanctions against ENO based upon the Investigators’ Report; and

WHEREAS, the Council directed ENO to demonstrate, within thirty (30) days, why penalties and sanctions including: (1) a cash payment of \$5 million to be paid in accordance with and for purposes determined by the Council; (2) certification that each ENO management level employee has or will complete a third-party ethics training course; and (3) submitting for Council approval an ENO Code of Conduct, developed with special emphasis on its dealings with and before the Council, which includes credible oversight and enforcement provisions specifically designed to avoid a repeat of the glaring breaches of ENO's existing Entergy Values and Ethics Statement, should not be imposed; and

WHEREAS, interested parties were also allowed to file comments with the Council within thirty (30) days of adoption of Resolution R-18-474; and

WHEREAS, the Council further ordered that all costs associated with the Investigation incurred by ENO and the Council, including monetary penalties and costs of complying with non-monetary penalties, would be disallowed for recovery from ratepayers pursuant to Code of the City of New Orleans, Section 158-582 and Section 158-626; and

WHEREAS, Resolution R-18-474 states that all costs incurred by the utility Advisors in connection with any and all aspects of the Investigation, including, but not limited to, monitoring penalties and sanctions shall be billed and reimbursed as usual, however, such payments would not be recoverable from ratepayers, and would be outside of and in addition to the Advisors' contract budgets, subject to normal Council review and oversight. ENO was also ordered to exclude all costs and penalties associated with the show cause proceeding, as well as their related regulatory ratemaking effects, from prospective rate action filings and clearly demonstrate the methodology by which such have been excluded; and

WHEREAS, the Council has determined that the sanctions detailed in the Show Cause proceedings are just and reasonable and should be imposed; and

ENO SETTLEMENT PROPOSALS

WHEREAS, on November 30, 2018, the Council received a letter from ENO with the subject "Entergy New Orleans, L.L.C. Offer of Settlement" (attached as Exhibit "A"); and

WHEREAS, in said letter, ENO stated "we understand that public discourse about important projects like [NOPS] should always be rooted in trust, integrity, and transparency"; and

WHEREAS, ENO offered to “donate” \$5 million to the City of New Orleans, committed to requiring “that ENO’s leadership (i.e. its CEO and Vice President of Regulatory Affairs)” will complete a third party business ethics course, and suggested the Council open a rulemaking to modify ENO’s existing Code of Conduct; and

WHEREAS, on January 30, 2019, ENO CEO David Ellis sent a letter to the Council with the subject “Entergy New Orleans, L.L.C.’s Revised Offer of Settlement” (attached as Exhibit “B”); and

WHEREAS, in its second offer letter, ENO offered the following terms in order to “resolve the most pressing issue before us, the pending Show Cause Resolution (Resolution R-18-474) and the potential repeal of the Council’s approval of the New Orleans Power Station (“NOPS”) (Resolution R-18-65)”:

1. A \$5 million settlement payment;
2. Third-party ethics training for management-level employees and a revised Code of Ethics to prevent astroturfing;
3. Work with Sewerage and Board (S&WB) to provide a reliable power source for S&WB pumps;
4. Specific additional efforts to reduce outages on the distribution system;
5. Regular reports on NOPS construction and maintenance costs;
6. Regular reports on available technologies as part of the triennial integrated resource plan (IRP) process;
7. Annual reports of NOPS emissions data as submitted to the Louisiana Department of Environmental Quality (LDEQ); and
8. Evaluation of the deal structures for renewables portfolio proposal as filed with the Council on July 31, 2018; and

WHEREAS, ENO asserted that the company through December 2018 has invested \$96 million in the NOPS project; and

WHEREAS, ENO and S&WB have formed a Joint Reliability Team that “has produced short-term risk mitigations measures, mid-term reliability improvements, and long-term solutions to improve reliability to [S&WB] facilities;” and

WHEREAS, “[ENO] has already implemented the majority of the short-term measures and has spent more than \$200,000 in determining feasibility of additional options for improving

the reliability of its electrical supply to the S&WB, including the construction of a new transmission-level substation and improvements;” and

CONCLUSIONS

WHEREAS, on the basis of the findings of the Independent Investigation that the comments of the paid actors during the public meetings did not affect or alter the record created in Docket No. UD-16-02 and the proposed terms of settlement are in line with the penalties and sanctions described in Resolution R-18-474; and

WHEREAS, ENO’s settlement offer, including performing the sanctions and penalties detailed in the Show Cause proceedings, is conditioned on the Council’s approval of NOPS remaining in effect as adopted in Resolution R-18-65; and

WHEREAS, in determining whether to accept ENO’s settlement offer the Council takes administrative notice of the Louisiana Department of Environmental Quality (“LDEQ”) permit issued to ENO for the NOPS plant on January 31, 2019 and filed with the Council on February 11, 2019 (attached as Exhibit “C”); and

WHEREAS, the Council also takes administrative notice of the “Basis for Decision” issued by the LDEQ in connection with the permit awarded (attached as Exhibit “D”), which concludes, among other things, that:

- LDEQ finds that ENO has complied with all applicable federal and state statutes and regulations and has otherwise minimized or avoided environmental impacts to the maximum extent possible.
- LDEQ finds that there are no alternative sites that would offer more protection to the environment than the existing site without unduly curtailing non-environmental benefits.
- LDEQ finds there are no alternative projects (including wind and solar) that would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits.
- LDEQ finds there are no mitigating measures which could offer more protection to the environment than the NOPS RICE, as proposed, without unduly curtailing non-environmental benefits.
- LDEQ determines that ENO has avoided, to the maximum extent possible, adverse environmental impacts without unduly curtailing non-environmental benefits.
- LDEQ finds that the social and economic benefits of the project outweigh the environmental impact costs; and

WHEREAS, the LDEQ concludes that: “The local, state, and national economy will benefit from the construction and operation of the NOPS at the Michoud Electric Generating Plant, which will provide personal income for the facility’s permanent and contract employees; increase the tax revenues for Orleans Parish, the state of Louisiana, and the federal government; and necessitate the purchase of goods and services from other businesses. These benefits are major, significant, and tangible, and outweigh the environmental impacts of the proposed project;” and

WHEREAS, ENO will be required by LDEQ to provide the following reports:

- **Semi-Annual Monitoring Report**
 - Due for submittal semi-annually by March 30th and September 30th and requires the reporting of any deviations that may have occurred from the Title V air permit for the semi-annual monitoring period and the corrective actions taken to prevent a re-occurrence.
- **Title V Certification Report**
 - Due annually by March 30th and requires reporting of any deviations from the Title V air permit for the previous calendar year and the corrective actions taken to prevent a re-occurrence.
- **RICE Engine Annual Report**
 - Due annually by April 30th and requires reporting of the start-up/shut-down hours, heat input, operating hours and fuel consumption for the RICE engines (required per specific requirement 71 of the Title V permit).
- **Emergency Diesel Generator Operating Report**
 - Due annually by March 31st per specific requirement 34 of the Title V permit. Requires the reporting of any hours of operation of the NOPS Emergency Diesel Generator at the Michoud site for the specific purposes specified in 40 CFR 60.4214(d).
- **Emissions Inventory**
 - Due annually by April 30th per specific requirement 100 of the Title V permit and requires the reporting of the total NOPS Criteria Pollutant Emissions for the previous calendar year.
- **Reports of Unauthorized Discharges of Pollutants**
 - Requires reporting of any unauthorized discharges of pollutants to the atmosphere in accordance with state regulations. If there are any unauthorized discharges of pollutants above the reportable quantity,

reporting is required to the Louisiana State Police, LDEQ, and the Orleans Parish Local Emergency Planning Committee.; and

WHEREAS, the Council desires to clarify and approve the settlement terms offered in ENO's letter to the Council dated January 30, 2019; **NOW THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,

That the Council hereby directs Council Staff to:

1. To consult with the Department of Finance and the City Attorney within fifteen (15) days of the adoption of this resolution to determine how a protected escrow account under the sole control of the Council can be established for the deposit of the one-time payment of \$5 million;
2. To establish within thirty (30) days of the adoption of this resolution the account resulting from the consultation in (1) above in such manner that the funds, once deposited, can only be removed or expended in strict compliance with a subsequent resolution of the Council, which resolution details the exact, specific and limited use of said funds.

That the Council hereby directs ENO to:

1. Make the one-time cash payment of \$5 million into the dedicated account identified in (1) and (2) above, which shall be controlled by the Council to assure that the funds are used solely for purposes determined by the Council. Said payment shall be deposited within thirty (30) days of adoption of this resolution by the Council;
2. Within sixty (60) days of the adoption of this resolution by the Council, and as detailed in the Show Cause proceeding, certify that each ENO management level employee has completed a third-party ethics training course;
3. Within ninety (90) days of the adoption of this resolution by the Council, and as detailed in the Show Cause proceeding, submit for Council approval an ENO Code of Conduct, developed with special emphasis on its dealings with and before the Council, which includes credible oversight and enforcement provisions of all provisions including, but not limited to, preventing astroturfing;
4. Bear any and all costs associated with the Investigation/Show Cause proceedings and this settlement, including the settlement payment, and any and all costs paid to the Council's Independent Investigators and the Council's Advisors that are associated with the Investigation/Show Cause proceedings, including such costs related to the enforcement of any provision of, or obligation under, this settlement. ENO shall also bear all costs related to ENO's compliance with items (2) and (3) above. ENO shall not seek to recover any of these costs from customers. ENO also agrees to exclude any and all such costs, and any related regulatory ratemaking effects from any future rate action filings. All such costs shall be disallowed for recovery from ratepayers pursuant to Code of the City of New Orleans, Section 158-582 and Section 158-626;

5. All costs incurred by the Council in connection with any and all aspects of the Investigation/Show Cause proceedings shall continue to be reimbursed to the Council and shall be disallowed for recovery from ratepayers pursuant to Code of the City of New Orleans, Section 158-582 and Section 158-626; and
6. All costs incurred by the utility Advisors in connection with any and all aspects of the Investigation/Show Cause proceedings, including, but not limited to, the settlement, and monitoring the terms of the settlement shall continue to be billed and reimbursed as usual, however these payments will not be recoverable from ratepayers and they shall be outside of and in addition to the Advisors' contract budgets, subject to normal Council review and oversight.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,

That, as further inducement for accepting the terms of the settlement offer, the Council hereby directs ENO to:

1. Expedite the development of a mutually agreeable, long-term solution to supply S&WB facilities with a reliable power source for all of S&WB's operations;
2. File a report with the Council every thirty (30) days beginning thirty (30) days after adoption of this resolution by the Council regarding the progress of its collaboration with S&WB, which also details a timeline for when a final resolution will be presented to the Council; and
3. Work with the Council and its Advisors regarding appropriate cost recovery mechanisms as determined by the Council.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the Council hereby directs ENO to take the following actions to improve ENO's electric system reliability, as recommended by Quanta Technology, L.L.C., in addition to those actions already proposed or accomplished by ENO in connection with its 2018 and 2019 Remediation Plans presented to the Council and its Advisors:

1. Accelerate distribution automation infrastructure by installing fifty (50) reclosers by July 1, 2019;
2. Implement by April 30, 2019, distribution field crew dispatch metrics designed to reduce the duration of customer outages by reducing average crew dispatch times for non-storm events to 10 minutes or less;

3. Design grid modernization projects to limit customer exposure to distribution-line-related outages within the area targeted by the project to approximately 500 customers or less per outage;
4. Provide the Council and Council Advisors by April 30, 2019, a detailed description of the consulting services that Internal Audit Services is performing for ENO with regard to the identification of risks and controls for the design of Grid Modernization processes and systems, including Advanced Metering Infrastructure, Enterprise Asset Management, Outage Management System/Distribution Management System, Customer Digital and Distribution Automation, including business, information technology, and cyber security risks and controls; and
5. Provide the Council Advisors with a copy of ENO-related post-implementation audit reports on the internal controls in these areas, with the exception of Cyber Security, which is to be handled separately in order to protect sensitive information.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the Council hereby directs ENO to implement the following:

A. NOPS Construction Costs

1. Provide bi-monthly reports to the Council during NOPS construction beginning thirty (30) days after adoption of this resolution by the Council detailing the expenditures made to date and the currently anticipated schedule for future expenditures; and
2. File a report with the Council when ENO becomes aware of the possible need for expenditures that will exceed the cost estimates contained in its application filed as part Docket UD-16-02 and receive approval before making such expenditures. Where it is not possible to file a description of the expenditures prior to the expense being incurred, ENO shall file a description of the expenditures as soon as reasonable practicable, including the necessity for the expenditure and the reason that advance approval could not be sought with the Council. ENO will not be permitted to recover such costs until the Council has reviewed the costs and approved them as prudent.

B. NOPS Operations and Maintenance

1. File quarterly reports with the Council detailing the expenditures for each quarter;
2. File an annual report regarding the anticipated operations and maintenance expenditures for the next 12-month period for the Council's review and approval. If the expenses during any given 12-month period exceed those detailed in the annual report by greater than 10%, without prior approval, ENO will not be permitted to recover such expenses from customers until such time as the expenses have been reviewed by the Council and approved as prudent; and

3. Propose any modifications to these requirements subject to Council approval after five (5) years from the adoption of this resolution by the Council.

C. Enhanced Technology Integration

The Company commits to include in its Integrated Resource Plan (IRP) any commercially available technologies that could be integrated at NOPS to enhance plant efficiency, reduce emissions, or otherwise improve the NOPS' cost effectiveness. ENO will incorporate this reporting into its IRP process, such that each IRP process fully considers the availability of any technology that may reduce emissions and/or improve the efficiency of the plant, or its cost effectiveness, and weigh the costs and benefits of those improvements as part of ENO's long term planning process.

D. Emissions

Submit to the Council, and post on the ENO website, all emissions data and other reports submitted to the LDEQ for the life of NOPS operations, including, but not limited to, the following: 1) Semi-Annual Monitoring Report; 2) Title V Certification Report; 3) RICE Engine Annual Report; 4) Emergency Diesel Generator Operating Report; 5) Emissions Inventory; 6) Reports of Unauthorized Discharges of Pollutants.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the Council hereby directs ENO to present within forty-five (45) days of adoption of this resolution by the Council alternative cost structures for the projects described in the renewables portfolio proposal filed with the Council on July 31, 2018 to the Council and all interested parties of Docket UD-18-06 in order to facilitate the favorable settlement of that docket.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That in connection with the additional proposed terms of the settlement offer, and the additional obligations imposed on ENO as described herein, adoption of this resolution by the Council shall render Resolutions R-19-17, R-19-18, R-19-19, and R-19-20 moot and each said Resolution is hereby withdrawn.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF, AND RESULTED AS FOLLOWS:
YEAS:

NAYS:
ABSENT:
AND THE RESOLUTION WAS ADOPTED.